

**FILED**

APR 10 2023

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                       
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

2:23 ON 0670- EFB (HC)

ALBERTO MUNOZ  
PETITIONER,

V.

WARDEN, F.C.I. HERLONG,  
RESPONDENT.

CASE NO.

**MOTION PURSUANT TO U.S.C. § 2241  
SEEKING APPLICATION OF EARNED  
FEDERAL TIME CREDITS THROUGH THE  
FIRST STEP ACT (F.S.A.)**

COMES, Alberto Munoz, PETITIONER, who is a federal inmate serving a sentence at F.C.I. Herlong in the State of California. He moves this court to grant this writ, and ORDER the Bureau of Prisons (BOP) to apply the earned FSA time credits that he has earned through various programs, in accordance with the Act.

This Court, having familiarity with Motions of this nature, should read the filing, examine the attached supporting evidence, and swiftly order the BOP to apply the earned time credits.

## I. ARGUMENT

Since the passage of the First Step Act, there has been serious deficiencies in the application of the 'earned time credits' to federal inmates, especially ones with possible immigration issues.

The BOP has waffled, and has changed the program statement to allow all persons that do **not** have a "FINAL ORDER" of deportation to have earned credits applied, however, the BOP system is not making the sentence adjustments uniformly, and many people are having to



file writs in federal courts under 28 U.S.C. § 2241, seeking the credits to be ORDERED by courts. It is under this pressure, that the BOP seems responsive. Accordingly, this petitioner is asking for the same relief that is due.

Here, the petitioner has a PATTERN SCORE of 2 points, and is further classified as a Minimum risk of recidivism. Due to these classifications, he is eligible to have the credits applied.

Thus far, this petitioner has earned 365 days towards early release, but his credits have not been applied thus far, and is asking this court to ORDER them to be properly applied according to the Act.

The petitioner has a tentative release date of: 02-05-2025. This petitioner is not subject to any final order of deportation, and so until that is established by an Immigration Court, his eligibility to earn and have applied, FSA time credits is a liberty interest that must be applied universally to all persons.

The BOP's current Program Statement that details the implementation of the First Step Act of 2018 clearly shows the language stricken that was used previously to bar persons with 'possible' deportation issues, or warrants, or detainers, or pending charges. Because none of these situations effect the actual release of an inmate, because there is no RCC/HC placement for these people, the effects of earning good time or earned FSA times are unaffected by possible, or pending immigration issues. As such, these credits must be applied.

Attached is EXHIBIT "A", FSA TIME CREDIT ASSESSMENT, showing how many credits this petitioner has earned. Attached is EXHIBIT "B",

PROGRAM REVIEW SHEET, showing the RISK to RE-OFFEND level and the current release date without the credits.

These exhibits demonstrate that this petitioner has earned the credits, is eligible to receive them, and has a score that commensurates with the application of the Act.

## II. RELIEF REQUESTED

For all of the above mentioned reasons, this petitioner respectfully requests that this Court GRANT the writ, and further ORDER the BOP to apply the earned credits in accordance with the First Step Act, and to further calculate the release date to reflect the proper application of these earned time credits.

Dated this 3rd day of April, 2023.

Respectfully submitted,

Alberto Muñoz

ALBERTO MUNOZ

Pro Se

**EXHIBIT "B"**



**Individualized Needs Plan - Program Review (Inmate Copy)**

Dept. of Justice / Federal Bureau of Prisons

SEQUENCE: 02035864

Team Date: 11-06-2022

Plan is for inmate: MUNOZ, ALBERTO 67821-380

Facility: HER HERLONG FCI  
 Name: MUNOZ, ALBERTO  
 Register No.: 67821-380  
 Age: 36  
 Date of Birth: 04-02-1986

Proj. Rel. Date: 02-05-2025  
 Proj. Rel. Mthd: GOOD CONDUCT TIME  
 DNA Status: BAS05124 / 01-06-2017

7 pt. Low (-1 Mthd)  
 Resume M Mar.

**Detainers**

Detaining Agency	Remarks
ICE	ALIEN EITHER LACKS IMMIGRATION STATUS OR STATUS IS REMOVABLE UNDER U.S. IMMIGRATION LAW. A208 554 534

**Current Work Assignments**

Fac	Assignment	Description	Start
HER	ORD-TC-AM	ORDERLY-TAHOE C AM	07-08-2022

**Current Education Information**

Fac	Assignment	Description	Start
HER	ESL EXEMPT	ESL NEED-PERMANENTLY EXEMPT	01-20-2017
HER	GED EARNED	GED EARNED IN BOP	02-06-2019

**Education Courses**

SubFac	Action	Description	Start	Stop
HER		DIST LA1	10-17-2022	CURRENT
HER		DIST THINK	10-10-2022	CURRENT
HER		ACE BUSINESS ETIQUETTE	10-12-2022	CURRENT
HER		ACE JOB INTERVIEWING (RPP 2)	10-07-2022	CURRENT
HER	C	DIST WRIT2	09-16-2022	09-20-2022
HER	C	RESUME WRITING 101 (RPP 2)	09-13-2022	09-13-2022
HER	C	ACE NUTRITION & MEALS (RPP 1)	09-01-2022	09-01-2022
HER	C	DIST SCI1	09-26-2022	09-30-2022
HER	C	DIST SCI2	09-27-2022	10-01-2022
HER	C	ACE BUSINESS ETIQUETTE	06-09-2022	06-09-2022
HER	C	DIST WRIT1	05-30-2022	06-03-2022
HER	C	DIST SS3	05-30-2022	06-03-2022
HER	C	DIST MATH1	06-13-2022	06-17-2022
HER	C	DIST SS1	06-06-2022	06-10-2022
HER	C	DISTANCE INFO	05-02-2022	05-09-2022
HER	C	DIST LA2	05-03-2022	05-10-2022
HER	C	DIST LA1	05-02-2022	05-09-2022
HER	C	ACE INTRO TO BUDGETING (RPP 3)	12-01-2021	12-01-2021
HER	C	ACE JOB INTERVIEWING (RPP 2)	12-06-2021	12-06-2021
HER	C	ACE MANNERS FOR MEN (RPP 6)	11-22-2021	11-22-2021
HER	C	ACE DRESS FOR SUCCESS (RPP 6)	11-15-2021	11-15-2021
HER	C	CREDIT EVAL AND REPAIR (RPP 3)	11-08-2021	11-08-2021
REE	C	ESL LEVEL 2 PM MINI COURSE	02-12-2021	03-12-2021
REE	C	ESL LEVEL 1 MINI COURSE	01-11-2021	02-08-2021
DRJ	W	ESLPM5 1400 M-F P102	04-01-2019	08-29-2019
DRJ	C	CULINARY ARTS M-F 0800	11-26-2018	02-28-2019
DRJ	C	OPERATE CALCULATOR FRI900-1030	01-17-2019	02-22-2019
DRJ	C	GEDSPA PREP 1030-1200 M-F P105	10-17-2018	02-06-2019
DRJ	C	NON-RESIDENTIAL M&TH 1300-1500	11-26-2018	01-17-2019
DRJ	C	COMPLETED INEA	11-30-2018	12-10-2018
DRJ	C	DRUG EDUCATION 6 1300-1430 WED	07-13-2018	09-19-2018
DRJ	C	A&O PREA COMP.EDU.CLASS TU 10A	04-24-2018	04-24-2018

**Discipline History (Last 6 months)**

Hearing Date	Prohibited Acts
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**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 02035864

Dept. of Justice / Federal Bureau of Prisons

Team Date: 11-06-2022

Plan is for inmate: MUNOZ, ALBERTO 67821-380

Hearing Date Prohibited Acts

**\*\* NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS \*\*****Current Care Assignments**

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	01-04-2017
CARE1-MH	CARE1-MENTAL HEALTH	01-17-2017

**Current Medical Duty Status Assignments**

Assignment	Description	Start
C19-T NEG	COVID-19 TEST-RESULTS NEGATIVE	05-15-2021
REG DUTY	NO MEDICAL RESTR-REGULAR DUTY	03-24-2020
YES F/S	CLEARED FOR FOOD SERVICE	07-22-2021

**Current Drug Assignments**

Assignment	Description	Start
DAP NO INT	DRUG ABUSE PROGRAM NO INTEREST	05-05-2021
ED COMP	DRUG EDUCATION COMPLETE	09-18-2020

**FRP Payment Plan**

Most Recent Payment Plan

FRP Assignment: COMPLT FINANC RESP-COMPLETED Start: 09-18-2020

Inmate Decision: AGREED \$25.00 Frequency: SINGLE

Payments past 6 months: \$0.00 Obligation Balance: \$0.00

**Financial Obligations**

No.	Type	Amount	Balance	Payable	Status
1	ASSMT	\$100.00	\$0.00	IMMEDIATE	COMPLETEDZ

**\*\* NO ADJUSTMENTS MADE IN LAST 6 MONTHS \*\*****FRP Deposits**

Trust Fund Deposits - Past 6 months: \$1,907.00 Payments commensurate ? N/A

New Payment Plan: \*\* No data \*\*

**Current FSA Assignments**

Assignment	Description	Start
FTC ELIG	FTC-ELIGIBLE - REVIEWED	05-05-2022
N-ANGER N	NEED - ANGER/HOSTILITY NO	09-15-2021
N-ANTISO N	NEED - ANTISOCIAL PEERS NO	08-05-2022
N-COGN TV N	NEED - COGNITIONS NO	08-08-2022
N-DYSLEX N	NEED - DYSLEXIA NO	05-25-2021
N-EDUC N	NEED - EDUCATION NO	11-10-2021
N-FIN PV Y	NEED - FINANCE/POVERTY YES	05-27-2021
N-FM/PAR N	NEED - FAMILY/PARENTING NO	08-08-2022
N-M HLTH N	NEED - MENTAL HEALTH NO	04-23-2021
N-MEDICL Y	NEED - MEDICAL YES	05-25-2021
N-RLF Y	NEED - REC/LEISURE/FITNESS YES	05-25-2021
N-WORK Y	NEED - WORK YES	05-12-2021
R-MIN	MINIMUM RISK RECIDIVISM LEVEL	11-04-2022

**Progress since last review**

Inmate arrived at FCI Herlong on 04-29-2021. He has his GED and has completed other educational programs. He has maintained clear conduct since last team and has completed his financial obligations.

**Next Program Review Goals**

Enroll in the ACT Work Keys class through Education by next team.  
To resolve any missing or "Refuse" FSA assessments, complete any available FSA Needs Assessment questionnaires on Trulincs under "Surveys". If there are not any available assessments, please contact the appropriate department (Psychology, etc) for a paper survey instead.

**Long Term Goals**

Sentry Data as of 11-04-2022

Individualized Needs Plan - Program Review (Inmate Copy)

Page 2 of 4

**Individualized Needs Plan - Program Review (Inmate Copy)**

Dept. of Justice / Federal Bureau of Prisons

Plan is for inmate: MUNOZ, ALBERTO 67821-380

SEQUENCE: 02035864

Team Date: 11-06-2022

Complete the Money Smart for Adults class through your Counselor by 11-2023.  
 Complete the Health and Wellness Throughout the Lifespan class through Recreation by 11-2023.  
 Complete the Brain Health as you Age class through Recreation by 11-2023.  
 Complete the Talking with Your Doctor class through Recreation by 11-2023.  
 Complete the Getting To Know Your Healthy Aging Body class through Recreation by 11-2023.  
 Complete the Healthy Steps for Older Adults class through Recreation by 11-2023.  
 Complete the Arthritis Foundation Walk with Ease class through Recreation by 11-2023.  
 Enroll in the Vocational Trades Carpentry class or another VT class of your choice by 11-2023.  
 If any of these recommended classes are currently unavailable, it is recommended to enroll in any other available classes to meet your First Step Act assessed needs.

**RRC/HC Placement**

No.  
 Criminal alien releasing to custody of ICE.  
 Consideration has been given for Five Factor Review (Second Chance Act):

- Facility Resources
- Offense
- Prisoner
- Court Statement
- Sentencing Commission

**Comments**

Treaty Transfer: Eligible and not interested.  
 Inmate individually assessed for extended RRC placement using the 2nd Chance Act criteria, he is not appropriate for placement, due to a detainer or pending charge/warrants. Inmate individually assessed for direct home detention and found not appropriate at this time, due to security and custody concerns.



HEROZ  
PAGE 001INMATE EDUCATION DATA  
TRANSCRIPT\* 10-24-2022  
\* 13:04:34REGISTER NO: 67821-380  
FORMAT: TRANSCRIPTNAME.: MUNOZ  
RSP OF: HER-HERLONG FCI

FUNC: PRT

## ----- EDUCATION INFORMATION -----

FACI	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
HER	ESL EXEMPT ESL NEED-PERMANENTLY EXEMPT	01-20-2017 0936	CURRENT
HER	GED EARNED GED EARNED IN BOP	02-06-2019 1441	CURRENT

## ----- EDUCATION COURSES -----

SUB-FACI	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
HER	DIST LA1	10-17-2022	CURRENT				
HER	DIST THINK	10-10-2022	CURRENT				
HER	ACE BUSINESS ETIQUETTE	10-12-2022	CURRENT				
HER	ACE JOB INTERVIEWING (RPP 2)	10-07-2022	CURRENT				
HER	DIST WRIT2	09-16-2022	09-20-2022	P	C	P	10
HER	RESUME WRITING 101 (RPP 2)	09-13-2022	09-13-2022	P	C	P	2
HER	ACE NUTRITION & MEALS (RPP 1)	09-01-2022	09-01-2022	P	C	P	2
HER	DIST SCI1	09-26-2022	09-30-2022	P	C	P	10
HER	DIST SCI2	09-27-2022	10-01-2022	P	C	P	10
HER	ACE BUSINESS ETIQUETTE	06-09-2022	06-09-2022	P	C	P	2
HER	DIST WRIT1	05-30-2022	06-03-2022	P	C	P	10
HER	DIST SS3	05-30-2022	06-03-2022	P	C	P	10
HER	DIST MATH1	06-13-2022	06-17-2022	P	C	P	10
HER	DIST SS1	06-06-2022	06-10-2022	P	C	P	10
HER	DISTANCE INFO	05-02-2022	05-09-2022	P	C	P	10
HER	DIST LA2	05-03-2022	05-10-2022	P	C	P	10
HER	DIST LA1	05-02-2022	05-09-2022	P	C	P	10
HER	ACE INTRO TO BUDGETING (RPP 3)	12-01-2021	12-01-2021	P	C	P	2
HER	ACE JOB INTERVIEWING (RPP 2)	12-06-2021	12-06-2021	P	C	P	2
HER	ACE MANNERS FOR MEN (RPP 6)	11-22-2021	11-22-2021	P	C	P	2
HER	ACE DRESS FOR SUCCESS (RPP 6)	11-15-2021	11-15-2021	P	C	P	2
HER	CREDIT EVAL AND REPAIR (RPP 3)	11-08-2021	11-08-2021	P	C	P	2
REE	ESL LEVEL 2 PM MINI COURSE	02-12-2021	03-12-2021	P	C	R	40
REE	ESL LEVEL 1 MINI COURSE	01-11-2021	02-08-2021	P	C	R	40
DRJ	ESLPM5 1400 M-F P102	04-01-2019	08-29-2019	P	W	V	69
DRJ	CULINARY ARTS M-F 0800	11-26-2018	02-28-2019	P	C	M	100
DRJ	OPERATE CALCULATOR FRI900-1030	01-17-2019	02-22-2019	P	C	P	12
DRJ	GEDSPA PREP 1030-1200 M-F P105	10-17-2018	02-06-2019	P	C	P	63
DRJ	NON-RESIDENTIAL M&TH 1300-1500	11-26-2018	01-17-2019	P	C	P	24
DRJ	COMPLETED INEA	11-30-2018	12-10-2018	P	C	P	10
DRJ	DRUG EDUCATION 6 1300-1430 WED	07-13-2018	09-19-2018	P	C	P	15
DRJ	A&O PREA COMP.EDU.CLASS TU 10A	04-24-2018	04-24-2018	P	C	P	1

## ----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACI	FORM	STATE
CASAS	LIST PLACE	225.0	05-18-2018	DRJ	1	
	READ PLACE	192.0	05-18-2018	DRJ	1	
GED	AVERAGE	588.0	02-06-2019	DRJ	PASS	GA
	LIT/ARTS	146.0	01-10-2019	DRJ	GLASP	GA
	MATH	148.0	02-06-2019	DRJ	GMASP	GA

G0002

MORE PAGES TO FOLLOW . . .

**"EXHIBIT A"**

## FSA Time Credit Assessment

Register Number: 67821-380, Last Name: MUNOZ

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number..... 67821-380

Inmate Name

Last..... MUNOZ

First..... ALBERTO

Middle.....

Suffix.....

Gender..... MALE

Start Incarceration: 12-09-2016

Responsible Facility: HER

Assessment Date..... 02-11-2023

Period Start/Stop.... 12-21-2018 to 02-11-2023

Accrued Pgm Days..... 1499

Disallowed Pgm Days.. 14

FTC Towards RRC/HC... 195

FTC Towards Release.. 365

Apply FTC to Release: No

Start	Stop	Pgm Status	Pgm Days
12-21-2018	02-11-2023	accrue	1499
Cannot apply FTC			
Detainer: Yes			

Start	Stop	Pgm Status	Pgm Days
12-21-2018	08-20-2020	accrue	608
Accrued Pgm Days.... 608			
Carry Over Pgm Days: 0			
Time Credit Factor.: 10			
Time Credits..... 200			

Start	Stop	Pgm Status	Pgm Days
08-20-2020	09-03-2020	disallow	14
In SHU			
Facility	Category	Assignment	Start Stop
REE	QTR	Z01-119UDS	08-20-2020 1730 09-02-2020 1157

Start	Stop	Pgm Status	Pgm Days
09-03-2020	12-05-2021	accrue	458
Accrued Pgm Days.... 458			
Carry Over Pgm Days: 8			
Time Credit Factor.: 10			
Time Credits..... 150			

Start	Stop	Pgm Status	Pgm Days
12-05-2021	02-11-2023	accrue	433
Accrued Pgm Days.... 433			
Carry Over Pgm Days: 16			
Time Credit Factor.: 15			
Time Credits..... 210			



**FSA Time Credit Assessment**

Register Number:67821-380, Last Name:MUNOZ

**U.S. DEPARTMENT OF JUSTICE****FEDERAL BUREAU OF PRISONS**

#	Start	Stop	Status	Risk Assignment	Risk Asn Start	Factor
001	12-21-2018	06-19-2019	PRESUMPTIVE	FSA R-LW	04-28-2021 1706	10
002	06-19-2019	12-16-2019	PRESUMPTIVE	FSA R-LW	04-28-2021 1706	10
003	12-16-2019	06-13-2020	PRESUMPTIVE	FSA R-LW	04-28-2021 1706	10
004	06-13-2020	12-10-2020	PRESUMPTIVE	FSA R-LW	04-28-2021 1706	10
005	12-10-2020	06-08-2021	ACTUAL	FSA R-LW	04-28-2021 1706	10
006	06-08-2021	12-05-2021	ACTUAL	FSA R-LW	04-28-2021 1706	10
007	12-05-2021	06-03-2022	ACTUAL	FSA R-LW	11-13-2021 1651	15
008	06-03-2022	11-30-2022	ACTUAL	FSA R-MIN	05-11-2022 2011	15
009	11-30-2022	05-29-2023	ACTUAL	FSA R-MIN	11-04-2022 1258	15

## FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number:67821-380, Last Name:MUNOZ

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 67821-380

Inmate Name

Last.....: MUNOZ

First.....: ALBERTO

Middle.....:

Suffix.....:

Gender.....: MALE

Risk Level Inmate.....: R-MIN

General Level.....: R-MIN (2)

Violent Level.....: R-MIN (4)

Security Level Inmate: LOW

Security Level Faci...: MEDIUM

Responsible Facility..: HER

Start Incarceration...: 12/09/2016

## PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	36	21	12
Walsh w/Conviction	FALSE	0	0
Violent Offense (PATTERN)	FALSE	0	0
Criminal History Points	0	0	0
History of Escapes	0	0	0
History of Violence	0	0	0
Education Score	HighSchoolDegreeOrGED	-2	-2
Drug Program Status	NoNeed	-6	-3
All Incident Reports (120 Months)	1	1	1
Serious Incident Reports (120 Months)	1	1	1
Time Since Last Incident Report	39	0	0
Time Since Last Serious Incident Report	39	0	0
FRP Refuse	FALSE	0	0
Programs Completed	21	-12	-4
Work Programs	1	-1	-1
	Total	2	4